Eligibility Indicators

July 2025

Version 5.9 (a revision to the March 2025 version)

The most current version of this document may be downloaded at https://www.ksde.gov/student-success/special-education/special-education-resources-for-families-and-educators/eligibility.

This is a non-regulatory g uidance document that will continue to be a working document, periodically updated based on input from its use in the field and new research.

Table of Contents

INTRODUCTION 3

ELIGIBILITY DETERMINATION 3

Prong 1: Determining Whether the Child is a Child with an Exceptionality 3

Prong 2: Determining Whether the Child Needs Special Education [Specially Designed Instruction] and Related Services 4

Eligibility, Labels, and Services 5

AUTISM 6

DEVELOPMENTAL DELAY (AGE 9 AND YOUNGER) 10

EMOTIONAL DISABILITY 14

GIFTED 18

INTELLECTUAL DISABILITY 21

LEARNING DISABILITY 24

Dyslexia 27

MULTIPLE DISABILITIES 30

ORTHOPEDIC IMPAIRMENT 33

OTHER HEALTH IMPAIRMENT 36

SENSORY IMPAIRMENTS 39

Hearing Impairment/Deafness 41

Blindness/Visual Impairment 43

Deaf-Blindness 45

SPEECH OR LANGUAGE IMPAIRMENT 47

TRAUMATIC BRAIN INJURY 50

REPORTING REQUIREMENTS 54

Document Updates Include:

- Emotional Disturbance/Disability – explicitly aligned with K.S.A. 72-3404(ff) and K.A.R. 91-40-1 – July 2025
- Emotional Disability – renamed to Emotional Disturbance consistent with KARs – March 2025
- Dyslexia – added as a subcategory of Learning Disability with indicators – June 2023
- Emotional Disturbance – renamed to Emotional Disability based on KSA 72-3404(ff) – June 2023
- Gifted – ~~added~~ exclusionary factor information page 18 ~~– August 2021~~ – removed – June 2023
- Gifted – added new indicator to Prong 2, last bullet page 20 – August 2021
- Autism – added more explanation to last exclusionary criteria page 6 – December 2020
- Other Health Impairment – removed the word 'medical' from Prong 1 item 1 page 34 – December 2020

Introduction

This document contains information about initial evaluation, including appropriate sources of data, eligibility determination, and includes Federal and State definitions of each exceptionality area as defined by the Individuals with Disabilities Education Act (IDEA). It also provides information regarding exclusionary factors that must be considered and examples of indicators of eligibility to assist school personnel as they make decisions. The purpose of the document is to provide guidance to evaluation teams as they seek to address the two-prong test of eligibility when determining if a child is eligible for special education. These examples of indicators are not an exhaustive list but provide guidance for evaluation teams. For further guidance and a more complete discussion of the initial evaluation process, see Chapter 3 in the *Kansas Special Education Process Handbook*. This important resource may be viewed and downloaded by accessing the Special Education Resources page at https://www.ksde.gov.

Eligibility Determination

The initial evaluation must include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. This includes information provided by the parent that may assist in determining whether the child is a child with an exceptionality, the educational needs of the child, and the content of the child's individualized education program (IEP), including information related to enabling the child to be involved, and progress in the general education curriculum or, for preschool children, to participate in appropriate activities (K.S.A. 72-986(b)(1)). The *Kansas Special Education Process Handbook* outlines two methods of evaluation, (i) "the child's response to scientific research-based intervention" and (ii) "a pattern of strengths and weaknesses", which are outlined in federal regulations with regard to the identification of children with specific learning disabilities. However, in Kansas, both are also appropriate to be used to determine eligibility for any of the areas of exceptionality. Regardless of the method chosen, evaluation teams will use existing and/or new data that comes from a variety of sources. The richest source of this information comes from the data collected in the provision of interventions. Interventions typically occur as a part of the General Education Intervention (GEI) process but may also be collected from interventions conducted during the initial evaluation process.

When interpreting evaluation data from either of the two methods of evaluation for the purpose of making an eligibility determination, the team must ensure (1) that the child meets the definition of one of the categories of exceptionality and, (2) as a result of that exceptionality, needs special education and related services (KAR 91-40-1(k)(w); 34 CFR 300.8). This is known as the two-prong test of eligibility. If a child meets the definition of an exceptionality category, but does not need special education and related services, they will not be determined to be eligible. If the child has a need for special education and related services but does not meet the definition of an exceptionality category, they will not be determined to be eligible. In the case of a child who is found to have a disability, but does not need special education and related services, a referral for a Section 504 evaluation may be considered.

Prong 1: Determining Whether the Child is a Child with an Exceptionality

"Exceptional children" means children with disabilities and gifted children (KAR 91-40-1 (w)). "Child with a disability" means the following: (1) a child evaluated as having intellectual disability, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services; and (2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services ((KAR 91-40-1 (k); CFR 300.8). K.S.A. 72-3404(ff) states "Emotional disability" means the same as the term "emotional disturbance" is used in public law 101-476, the individuals with disabilities education act."

When considering the first prong of the two-prong test of eligibility, the team reviews the initial evaluation and other data to determine whether or not the child is a child with an exceptionality. To do this, team members compare the data about the child to see if there is a match to one of the exceptionality categories defined in the regulations. However, even when the data points to a particular area of exceptionality, there are exclusionary factors that must be examined before determining whether the child is a child with an exceptionality.

Regulations are very clear with regard to the fact that a child must NOT be determined to be a child with an exceptionality if:

(a) the determinant factor is:
- Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of Elementary and Secondary Education Act (ESEA) as explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills, and reading comprehension strategies); or
- Lack of appropriate instruction in math; or
- Limited English proficiency; and

(b) the child does not otherwise meet the eligibility criteria as a child with an exceptionality (KSA 72-986(f); KAR 91-40-10(c); 34 CFR 300.306(b)).

In addition to these exclusionary factors which apply to all categories of disability, there are exclusionary factors specific to certain disabilities that must also be ruled out. Those factors are contained in this document and guidance is provided to assist teams in their evaluation of these factors as they determine eligibility.

If the evaluation data indicate there is a match with a particular category of exceptionality and the team has ruled out the presence of any exclusionary factors, the team may determine that the child meets one of the requirements of eligibility as a child with an exceptionality (Prong 1 of the test of eligibility). If there is not a match or exclusionary factors are present, the team must determine that the child does not meet the eligibility of a child with an exceptionality. However, being gifted or having a disability does not necessarily qualify a child for special education services. Thus, teams must also consider the component of the definition which states: "and who, by reason thereof, needs special education and related services."

Prong 2: Determining Whether the Child Needs Special Education [Specially Designed Instruction] and Related Services

The second prong of the test of eligibility is to determine whether or not the child needs special education and related services as a result of the exceptionality. It is helpful for teams to remember that by definition special education means specially designed instruction (KAR 91-40-1(kkk); 34 CFR 300.39(a)(1)), and, that specially designed instruction means adapting the content, methodology, or delivery of instruction to address the unique needs of a child that result from the child's exceptionality to ensure access of the child to the general education curriculum in order to meet the educational standards that apply to all children (KAR 91-40-1(lll); 34 CFR 300.39(b)(3)(i-(ii)). This implies that in order to have a need for special education, the child has specific needs which are so unique as to require specially designed instruction in order to access and progress in the general education curriculum.

Kansas regulations at KAR 91-40-7(c)(1-2), require that prior to referral for an initial evaluation the school must have data-based documentation of the following: (1) having provided appropriate instruction to the child in regular education settings that was delivered by qualified personnel; (2) repeatedly assessing the child's academic achievement at reasonable intervals which reflect formal assessment of the child's progress during instruction; (3) having provided the assessment results to the child's parents; and (4) the assessment results indicate an evaluation is appropriate. The data collected prior to referral must be documented as indicated above and, if the child goes on for evaluation, that data becomes an integral part of the eligibility determination of need. Whether the school is implementing a system of multi-tier system of supports or uses an individual problem solving approach (e.g. Student Improvement Team, Student Assistance Team, CARE, etc.) to carry out interventions and document the child's progress, the school will have data regarding the child's needs related to the intensity of instruction and supports required for the child to be successful.

The team must review the evaluation data in such a way as to understand the extent of the child's needs with regard to specially designed instruction. Teams should be able to use the data to describe the intensity of the support needed to assist the child in accessing and progressing in the general education curriculum. It is only through this discussion that the team can determine whether or not the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided without the support of special education.

If the team determines that the child's need for having adapted content, methodology, or delivery of instruction is so great that it cannot be provided in regular education without the support of special education, the team may determine that the child needs special education and related services (Prong 2 of the eligibility test). If the data suggest the child's needs for instruction can be provided within regular education without the support of special education and related services, the team must determine that the child is not in need of special education and related services.

Eligibility, Labels, and Services

Once a child is identified as a child with a disability, determination of services to be provided are based on the child's needs, not on the child's label. In other words, children do not need to be identified with a label for each related service they receive. For example, a child with a learning disability does not need to have a secondary label as emotional disability to receive counseling for emotional issues (see Gifted section for specifics of how this applies to students identified as Gifted only). For children determined to be eligible for special education and related services as a child with an exceptionality, the Present Levels of Academic Achievement and Functional Performance (PLAAFPs) of the IEP should contain the evaluation information that describes the child's needs. The PLAAFPs must include information regarding academic achievement, functional performance, and the impact of the exceptionality on the child's ability to access and progress in the general education curriculum.

Autism

KAR 91-40-1
(f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading (fluency including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are not due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.
The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disability. K.S.A. 72-3404(ff) states: "Emotional disability" means the same as the term "emotional disturbance" is used in public law 101-476, the individuals with disabilities education act."	The co-morbidity of autism and other types of disabilities must be recognized, especially mental health. If there is a co-occurrence of indicators for both autism and emotional disability, the team must determine which is the primary [principal] impact on the child's educational performance, autism or emotional disability. In making an identification decision, knowing that indicators from both disabilities may exist, it is the responsibility of the team to make the determination of which disability area is the primary [principal] cause of the adverse effect on the child's performance and identify disability(ies) accordingly.

Prong 1: Does the child exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Evidence of a developmental disability significantly affecting verbal communication
   - Measures, record reviews, interviews, and/or observations indicate child's skills in verbal communication are significantly different from peers.
   - Abnormal volume, pitch, intonation, rate, rhythm, stress, prosody
   - Limited ability to convey a range of emotions via words
2. Evidence of a developmental disability significantly affecting nonverbal communication
   - Measures, record reviews, interviews, and/or observations indicate child's skills in nonverbal communication are significantly different from peers.
   - Impairments in social use of eye contact
   - Impairment in the use and understanding of body postures and gestures
   - Limited ability to convey a range of emotions via expressions, tone of voice, gestures
   - Inability to coordinate eye contact or body language with words or gestures
3. Evidence of a developmental disability significantly affecting social interaction
   - Measures, record reviews, interviews, and/or observations indicate child's skills in social interaction are significantly different from peers.
   - Abnormal social approaches
   - Failure of normal back and forth conversation
   - Reduced sharing of interests, emotions/affect
   - Lack of initiation of social interaction
   - Poor social imitation
   - Inability to take another person's perspective (for children with a chronological age above 4 years)
   - Difficulties adjusting behavior to social contexts
   - Difficulties in sharing imaginative play
   - Difficulties in making friends
   - Absence of interest in others
4. Evidence of adverse effect on educational performance
   - Measures, record reviews, interviews and/or observations indicate that the child's condition adversely impacts his/her educational performance.

Other Supporting Information

- Measures, record reviews, interviews, and/or observations provide information which substantiates child characteristics such as engagement in repetitive activities and stereotyped movements; resistance to environmental change or change in daily routines; and unusual responses to sensory experiences which are significantly different than peers.
- Records contain medical information or a diagnosis (by appropriately trained and qualified diagnostician) that substantiates the elements of the Kansas definition. This information should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Progress monitoring data indicate intense or sustained resources needed in order for child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. • Progress monitoring data show that the child's behavior of concern is resistant to targeted supplemental and intensive interventions to address communication, social interaction, and/or academic skills. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Developmental Delay (age 9 and younger)

KAR 91-40-1
(q) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:
(A) Physical;
(B) cognitive;
(C) adaptive behavior;
(D) communication; or,
(E) social or emotional development

The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are not due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, chronic absenteeism, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Records indicate the child is age 9 or under. 2. Performance is significantly below developmental expectations on a criterion referenced instrument in one or more developmental areas. The developmental areas include: (1) Physical; (2) cognitive; (3) adaptive behavior; (4) communication; or (5) social or emotional development. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit and systematic instructional interventions. • Performance is significantly below normative sample on a standardized assessment in one or more developmental areas. • Performance is significantly lower than peers on one or more benchmark assessments, curricular objectives, or state assessments. • Measures, record reviews, interviews, and/or observations demonstrate significant deviation from average development in one or more developmental areas. For a child three to five years old, who is not yet enrolled in kindergarten: • Measures, record reviews, interviews, and/or observations demonstrate significant deviation from average development in one or more developmental areas. • Performance is significantly below normative sample on a standardized assessment in one or more developmental areas. • Performance is significantly lower than peers on one or more curriculum-based assessment, criterion referenced assessment, and/or performance assessment.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Progress monitoring data indicates intense or sustained resources needed in order for child to: ◦ physically negotiate and manipulate the environment, or ◦ understand age appropriate information, reason, and solve problems, or ◦ exhibit developmentally appropriate adaptive skills, such as self-care, home living, community use, self-direction, health and safety, and functional academics, or ◦ convey and comprehend communication and social intent, or ◦ positively impact relationships with peers and adults, or ◦ initiate, respond to, and maintain positive social relationships, or ◦ meet behavioral expectations (e.g., following directions, rules, and routines). • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more developmental areas. • Progress monitoring data show low rate of growth in areas of concern despite provision of increasingly intense, explicit instructional interventions to address communication, social interaction, and/or academic skills. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten • Data collected through interviews with caregivers, observations in the natural environment, and assessments indicates intense or sustained resources needed in order for child to: ◦ physically negotiate and manipulate the environment, or ◦ understand age appropriate information, reason, and solve problems, or ◦ exhibit developmentally appropriate adaptive skills such as self-care, home living, community use, self-direction, health and safety, and functional academics, or ◦ convey and comprehend communication and social intent, or ◦ positively impact relationships with peers and adults, or ◦ initiate, respond to, and maintain positive social relationships, or ◦ meet behavioral expectations (e.g., following directions, rules, and routines). • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Despite extra support, the child continues to make minimal or no progress. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Emotional Disability

"Emotional disability" means the same as the term "emotional disturbance" is used in public law 101-476, the individuals with disabilities education act." K.S.A. 72-3404(ff)

KAR 91-40-1
(v) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
(1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
(2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
(3) inappropriate types of behavior or feelings under normal circumstances;
(4) a general pervasive mood of unhappiness or depression; or
(5) a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia, but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring data indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observations in the child's natural environment that indicate whether or not the child has been exposed to activities appropriate for his/her age.

• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring data indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observations in the child's natural environment that indicate whether or not the child has been exposed to activities appropriate for his/her age.
• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also, consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality.	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.
• The child may not be socially maladjusted, unless it is determined that he/she also has an emotional disability.	Courts have interpreted social maladjustment to mean a conduct disorder. Teams should review records to rule out that the child has been identified as a child having a conduct disorder, unless other evidence that the child also has an emotional disability exists.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Characteristics of Emotional Disability.
    - Measures, record reviews, interviews, and/or observations indicate levels of physical symptoms or fears which are different from peers and are correlated with school problems.
    - Measures, record reviews, interviews, and/or observations indicate child exhibits inappropriate behaviors or feelings under normal circumstances.
    - Measures, record reviews, interviews, and/or observations indicate an inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
    - Measures, record reviews, interviews, and/or observations indicate a pervasive mood of unhappiness or depression.
2. Evidence that characteristics have been exhibited over a long period of time.
    - Measures, record reviews, interviews, and/or observations indicate that emotional difficulties have been exhibited over a long period of time.
3. Evidence that characteristics are exhibited to marked degree.
    - Measures indicate behavioral and emotional characteristics are exhibited to a marked degree when compared to peers.
4. Evidence that behavior adversely affects educational performance.
    - Measures, record reviews, interviews, and/or observations indicate that emotional characteristics are adversely affecting the child's educational performance. Educational performance includes academic performance as well as the ability to function within the learning environment such as appropriate participation in large group, small group, or individual learning settings.
    - Measures, record reviews, interviews, and/or observations indicate an inability to learn that cannot be explained by intellectual, sensory, or health factors.
    - Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit and systematic instructional interventions.

Other Supporting Information

Records document a diagnosis (by appropriately trained and qualified diagnostician) that substantiates the elements of the Kansas definition. A diagnosis should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Progress monitoring data indicate intense or sustained resources are needed in order for child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. • Modifications of instruction, curriculum, and the environment have not adequately addressed the behaviors, feelings, relationships, moods, fears, or physical symptoms that adversely affect the child's educational performance. • Progress monitoring data displayed on charts or graphs show low rate of improvement in the behavior of concern despite provision of increasingly intense, explicit and systematic instructional interventions. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Gifted

KAR 91-40-1
(bb) "Gifted" means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience and environment.

Exclusionary Criteria:

• The child must be school age.	For children identified as gifted, having attained the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school (K.A.R. 91-40-1(ddd)). To be identified as gifted the student must be at least 5 years old and not have graduated from high school.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Evidence of performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields
   - Measures, record reviews, interviews, and/or observations indicate child demonstrates superior reasoning and problem solving ability.
   - Progress monitoring indicates child's skill level in one or more academic areas is much above that of peers.
   - Grade Point Average, classroom assessments, portfolios, or rubrics indicate significant excellence in academics.
   - District, state, and national assessments indicate significant excellence in academics.
   - A rank of not less than the 95th percentile on national norms on a standardized, norm-referenced achievement test in one or more of the academic fields (mathematics, language arts (including reading), science, and social science), or evidence that such test scores do not adequately reflect the child's excellence in academics. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience.
   - College entrance exams indicate significant excellence in academics.
   - Pre-tests consistently indicate child has already mastered end of unit/curricular objectives prior to instruction.
2. Evidence of being due to intellectual ability
   - Measures, record reviews, interviews, and/or observations indicate child shows persistent intellectual curiosity and asks searching questions.
   - Measures, record reviews, interviews, and/or observations indicate child shows initiative and originality in intellectual work.
   - Ease of task completion indicates a significantly high level of intellectual ability.
   - Rate of acquisition and retention indicate a significantly high level of intellectual ability.
   - Products from home or school indicate a significantly high level of intellectual ability.
   - A composite rank of not less than the 97th percentile on an individually administered, standardized, norm-referenced test of intellectual ability, or evidence that the child's standardized, intelligence test score does not adequately reflect the child's high intellectual potential. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience.
3. Evidenced that when compared to others of similar age, experience and environment
   - Multiple characteristics of giftedness exhibited when interventions provide adaptations, enrichment, or acceleration as compared to peers, with consideration given to cultural or linguistic differences.
   - Persistence to task and generalization of knowledge gained indicate a remarkably high level of accomplishment.
   - Coursework analysis indicates a significantly high level of intellectual ability and excellence in academics when provided with interventions.
   - Performance significantly higher than peers in one or more areas on benchmark assessments, curricular objectives, or state assessments, with consideration given to cultural or linguistic differences.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Progress monitoring data indicate intense or sustained resources needed in order for child to demonstrate appropriate progress. • Evidence of mastery of successive levels of instructional objectives or course requirements indicates the need for intensive adaptations or acceleration. • Progress monitoring data show that differentiated instruction and targeted interventions are insufficient for child to demonstrate appropriate progress. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum at appropriate levels of instruction. • Intensive changes or modifications needed in instruction, curriculum, grouping, assignments, etc. for the child to demonstrate appropriate progress. • Evidence of child's frustration with enriched instructional environments indicates the need for intensive adaptations or acceleration. • General education interventions such as alternative course selections or cross-age grouping are insufficient to support the child's progress. • Evidence of anxiety, perfectionism, over-commitment of time, social isolation, or other characteristics related to giftedness indicates the need for intensive instructional or emotional supports.

NOTE:

A child may be found eligible as having both giftedness as defined by KAR 91-40-1 and as having a disability area under IDEA. The child must meet the eligibility criteria for both the disability and giftedness. If a child is identified for both gifted and a disability, the disability should be entered as the primary exceptionality in the MIS system.

Children who are identified as both a child with a disability and gifted may receive any related services for which there is a documented need. Children identified only as gifted may receive only the related services of counseling services, parent counseling, school psychological services, school social work services, and transportation. Even if the child shows a weakness in an area (such as written language), the child cannot be provided with a related service to address the weakness unless the child meets the eligibility criteria for a disability under IDEA.

Intellectual Disability

KAR 91-40-1
(oo) "Intellectual Disability" means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Limited English proficiency; and	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.

• the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators

For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Information relating to sub-average general intellectual functioning
   - Rate of learning, as measured by progress monitoring, is markedly different from peers.
   - Childs's score is significantly below the mean on an individually administered, standardized, norm-referenced test of intellectual ability, with consideration given to cultural or linguistic differences.
2. Information related to deficits in adaptive behavior
   - Measures, records, interviews, and/or observations indicate significant deficits across adaptive behavior areas, such as conceptual skills, social skills, and practical skills, with consideration given to cultural or linguistic differences.
3. Information related to initial occurrence during the developmental period
   - Measures, records and/or interviews indicate deficits in adaptive behavior and low intellectual functioning were manifested during the developmental period.
   - Measures, records, interviews, and/or observations indicate adaptive behavior deficits have occurred over an extended period of time.
4. Evidence of Adverse Effects on Educational Performance
   - Measures, records, interviews, and/or observations indicate child's level of educational performance has been significantly below age or state-approved grade level standards.
   - Performance is significantly below age or state-approved grade level standards when measured on benchmark assessments, curricular objectives, or state assessments.
   - Measures of academic achievement indicate significant delays across subject areas, with consideration given to cultural or linguistic differences.

Other Supporting Information

Records contain medical information or a diagnosis (by appropriately trained and qualified diagnostician) that substantiates the elements of the Kansas definition. This information should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum and environment, child's rate of learning is significantly less than peers. • Despite modifications in instruction, curriculum and environment, child's educational performance in various age appropriate environments is significantly below age or state-approved grade level standards. • Despite modifications in instruction, curriculum and environment, child's adaptive behavior skills in various age appropriate environments is significantly delayed from peers. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Learning Disability

KAR 91-40-1

(mmm) “Specific learning disability” means a disorder in one of more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following: (1) Visual, hearing, or motor, disabilities; (2) Intellectual Disability; (3) emotional disturbance; or (4) environmental, cultural, or economic disadvantage.

K.S.A. 72-3404(ff) states: "Emotional disability" means the same as the term "emotional disturbance" is used in public law 101-476, the individuals with disabilities education act.”

KAR 91-40-11

(b)(1) A group evaluating a child for a specific learning disability may determine that the child has such a disability only if the following conditions are met:

(A) The child does not achieve adequately for the child's age or meet state-approved grade-level standards, if any, in one or more of the following areas, when the child is provided with learning experiences and instruction appropriate for the child's age and grade level: (i) Oral expression; (ii) listening comprehension; (iii) written expression; (iv) basic reading skill; (v) reading fluency skills; (vi) reading comprehension; (vii) mathematics calculation; and (viii) mathematics problem solving; and

(B)(i) The child does not make sufficient progress to meet age or state-approved grade level standards in one of more of the areas identified in paragraph (b)(1)(A) when using a process based on the child’s response to scientific, research-based intervention; or (ii) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development that is determined by the group conducting the evaluation to be relevant to the identification of a specific learning disability, using appropriate assessments.

Dyslexia

The IDEA as well as Kansas statute (K.S.A. 2022 Supp. 72-3404) and regulations recognize dyslexia as a disability as stated within the definition of Specific Learning Disability.

Dyslexia Definition*

Dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

*Adopted by the International Dyslexia Association Board of Directors, November 12, 2002, and the Kansas State Board of Education, November 2020.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if **the determinant factor** is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency including oral reading skills and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials [The Reading League Curriculum Evaluation Guidelines], (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

The determinant factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of: • A visual, hearing or motor disability; • emotional disability, • cultural factors; • environmental or economic disadvantage; • limited English proficiency; or • intellectual disability	Evidence shows that child information does not match indicators for visual, hearing, or motor disability, intellectual disability, or emotional disability indicating the presence of another disability is not the primary cause of learning problems. However, it should be recognized that learning disabilities can co-exist with other types of disabilities (i.e., co-morbidity). If any other factors (cultural, environmental or economic disadvantage, or limited English proficiency) are an issue for the child being evaluated, provide evidence that the child was provided with appropriate accommodations and interventions to address them. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, these factors are ruled out as the primary cause.

Prong 1: Does the child exhibit an exceptionality (Learning Disability)?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Observational Data
    - Observation in the child's learning environment (which must include the general education classroom) provides evidence of the child's performance and behavior in the area of difficulty. [Note: This is required for all evaluations of children suspected of having a learning disability.]
2. The child does not achieve adequately for the child's age or meet state-approved grade-level standards.
    - Progress monitoring data indicates the child exhibits both a (1) low level of performance (after appropriate interventions) when compared to peers and (2) low rate of growth/rate of improvement (after appropriate interventions) when compared to peers.
    - Data indicates a pattern that show a consistent weakness in a process related to the achievement delay and a relative strength in a process unrelated to the achievement delay.
    - Measures of achievement in basic reading skills, reading fluency skills, and/or reading comprehension is significantly below age or state-approved grade level standards.
    - Measures of achievement in math calculation or math problem-solving are significantly below age or state-approved grade level standards.
    - Measures of achievement in written expression are significantly below age or state-approved grade level standards.
    - Measures of oral expression and/or listening comprehension indicate child performance is significantly below age or state-approved grade level standards.
    - Interviews indicate child demonstrates a high level of understanding during oral discussions but lacks mastery of basic skills.
    - Performance is significantly below age or state-approved grade level standards on one or more benchmark assessments, curricular objectives, or state assessments.
3. Evidence of provision of learning experiences and instruction appropriate for the child's age and grade level.
    - Records of intervention indicate appropriate instructional decisions based on child data.
    - Progress monitoring data displayed on charts or graphs show low rate of growth/improvement in at least one achievement domain despite provision of increasingly intense, explicit and systematic instructional interventions.

Other Supporting Information

Record reviews show a diagnosis (by an appropriately trained and qualified diagnostician) of learning disability or previous identification as having a learning disability or other diagnosis of perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, dyscalculia, dysgraphia, or developmental aphasia. A diagnosis should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 1: Does the child exhibit an exceptionality (Learning Disability Specification of Dyslexia)?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:

1. Observational Data
    - Observation in the child's learning environment (which must include the general education classroom) provides evidence of the child's performance and behavior in the areas of difficulties (accurate and/or fluent word recognition and by poor spelling and decoding abilities). [Note: This is required for all evaluations of children suspected of having a learning disability.]
2. The child does not achieve adequately for the child's age or meet state-approved grade-level standards.
    - Progress monitoring data indicates the child exhibits both a (1) low level of performance (after targeted interventions) when compared to peers and (2) low rate of growth/rate of improvement (after targeted interventions) when compared to peers.
    - Data indicates a pattern that show an unexpected weakness in a phonological process related to difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties in phonological awareness are unexpected for the student's age and educational level.
    - Measures of achievement in basic reading skills, reading fluency skills, and/or spelling is significantly below age or state-approved grade level standards.
3. Evidence of provision of structured literacy and evidence-based supplemental instruction (including the speech sound system (phonology), sound/symbol association, the writing system (orthography), the structure of sentences (syntax), the meaningful parts of words (morphology), the relationship among words (semantics), and the organization of spoken and written discourse) appropriate for the child's age and grade level.
    - Records of intervention indicate appropriate instructional decisions based on child data.
    - Progress monitoring data displayed on charts or graphs show low rate of growth/improvement in accurate and/or fluent word recognition and by poor spelling and decoding abilities despite provision of increasingly intense, explicit and systematic instructional interventions.

Other Supporting Information

Record reviews show dyslexia diagnosis by an appropriately trained and qualified licensed professional should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services (all areas of Learning Disability including Dyslexia)?

Indicators
• Progress monitoring data indicate intense or sustained resources needed in order for child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. • Despite modifications of instruction, curriculum, and environment, progress monitoring data show variability across academic performance areas. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

NOTE:

There is no requirement for the administration of any specific test, including intelligence tests, tests of psychological processes, or norm referenced tests of achievement in order to identify a child as a child with a learning disability. "The [U.S.] Department [of Education] does not believe that an assessment of psychological or cognitive processing should be required in determining whether a child has an SLD. There is no current evidence that such assessments are necessary or sufficient for identifying SLD." Federal Register Vol 71, No. 156 / Monday August 14, 2006/ Rules and Regulations, page 46651.

KSDE's guidance is that the use of IQ-Achievement Discrepancy to identify a child as a child with a learning disability is an inappropriate practice.

Multiple Disabilities

KAR 91-40-1
(pp) "Multiple disabilities" means coexisting impairments, the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. The term shall not include deaf-blindness.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.

• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.
• The term shall not apply if a child's educational performance is adversely affected primarily because the child is a child with deaf-blindness	The team should rule out the presence of deaf-blindness. If the data the team collects match the indicators for deaf-blindness, the child should be identified as a child with deaf-blindness rather than a child with multiple disabilities.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Evidence of co-existing impairments • Record review and/or Interviews indicate the presence of co-existing impairments. 2. Evidence that an educational program for solely one impairment is insufficient • Measures of educational performance indicate that the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. Other Supporting Information Records contain medical information which provides evidence of multiple disabilities.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from peers. • Despite modifications in instruction, curriculum, and environment, child's adaptive behavior skills in various age appropriate environments is significantly delayed from peers. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. • Measures, record review, interviews, and observations show that coexisting impairments adversely affect the child's participation and progress in the general curriculum or participation in age-appropriate activities. • Information from multiple sources of data indicates that the child exhibits a combination of impairments which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Orthopedic Impairment

KAR 91-40-1
(tt) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance and includes impairments caused by any of the following: 1) congenital anomaly, such as clubfoot or absence of a limb; 2) disease, such as poliomyelitis or bone tuberculosis; and 3) other causes, such as cerebral palsy, amputation, and fractures or burns that cause contractures.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following categories:
1. Records contain medical information which provides evidence of orthopedic impairment. • Records contain information substantiating an impairment caused by: congenital anomaly, such as clubfoot or absence of a limb; disease, such as poliomyelitis or bone tuberculosis; and, other causes such as cerebral palsy, amputation, and fractures or burns that cause contractures. • Records and/or interviews indicate a history of orthopedic impairment. 2. Records, interviews, observations, and/or tests show that the child's educational performance is much below that of peers. • Records, interviews, observations, and/or tests show that the child's orthopedic condition adversely impacts his/her educational performance. • Measures of motor skills indicate the child's skills are much below that of peers. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit and systematic instructional interventions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, child's rate of learning is significantly less than peers. • Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from peers. • Despite modifications in instruction, curriculum, and environment, child's adaptive behavior skills in various age appropriate environments are significantly delayed from peers. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Other Health Impairment

KAR 91-40-1
(uu) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria: 1) is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and 2) adversely affects a child's educational performance.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum include explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Records contain information which document chronic or acute health problems including: asthma; attention deficit disorder or attention deficit hyperactivity disorder; diabetes; epilepsy; heart condition; hemophilia; lead poisoning; leukemia; nephritis; rheumatic fever; sickle cell anemia; or Tourette syndrome. • Measures, record review, interviews, observations, and/or tests show the child's strength, vitality, or alertness is/are significantly different from peers. • Measures, record review, interviews, observations, and/or tests show the child demonstrates limited alertness with respect to the educational environment. 2. Measures, record review, interviews, observations, and/or tests show that the child's condition adversely impacts his/her educational performance. • Measure, record review, interviews, observations, and/or tests show that the child's educational performance is much below that of peers. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit and systematic instructional interventions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, child's rate of learning is significantly less than peers. • Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from peers. • Providing modifications in instruction, curriculum, and environment does not alleviate adverse effects on child's educational performance due to differences in strength, vitality, or alertness. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Sensory Impairments

KAR 91-40-1
(dd) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that does not constitute deafness as defined in this regulation.
(p) "Deafness" means a hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and adversely affects the child's educational performance.
(uuu) "Visual impairment" means an impairment in vision that, even with corrections, adversely affects a child's educational performance. The term includes both partial sight and blindness.
(g) "Blindness" means a visual impairment that requires dependence on tactile and auditory media for learning
(o) "Deaf-blindness" means the combination of hearing and visual impairments that causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

THE FOLLOWING EXCLUSIONARY CRITERIA APPLY TO HEARING IMPAIRMENT, DEAFNESS, VISUAL IMPAIRMENT, BLINDNESS, AND DEAF-BLINDNESS

Exclusionary Criteria

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also, consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

THE FOLLOWING INDICATORS APPLY TO

Hearing Impairment/Deafness

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Records contain information which provides evidence of hearing impairment/deafness. • Measures of hearing impairment indicate the following: o a chronic or progressive condition exists which interferes with the auditory learning mode (permanent or fluctuating) o congenital malformations of the auricle (e.g., absence of a pinna or ear canal opening) that results in a hearing loss o the hearing loss is not severe enough to constitute deafness • Measures of deafness indicate the following: o hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification o congenital malformations of the auricle (e.g., absence of a pinna or ear canal opening) that results in deafness 2. Adverse effect on educational performance • Measures, record reviews, interviews and/or observations indicate that the child's condition adversely impacts his/her educational performance. **Other Supporting Information** Records contain medical information which provides evidence that the child is deaf or hearing impaired. Examples include: • Documentation of Auditory Processing Disorder (APD), also referred to as Central Auditory Processing Disorder (CAPD), or evidence of difficulty in processing and interpreting auditory stimuli which often results from a problem in the brainstem or cerebral cortex. • Auditory Neuropathy Spectrum Disorder (ANSD) or evidence of a disorder in which sound enters the inner ear normally, but the transmission of signals from the inner ear to the brain is impaired or virtually absent. • Functional Deafness or evidence that the structures of the ear are present and working; however, the child does not attend, respond, localize, or process sound; (a) to receive information from the environment; (b) accurately interpret information about the environment; and/or (c) to accurately interpret meaning from sound to information provided linguistically with or without amplification. A diagnosis should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• The hearing loss limits full auditory access to educational program, impacts educational performance, and/or prohibits the child from reaching full non-verbal cogitative potential. For example, the child exhibits an impairment of spoken or signed articulation, phonology, voice and/or fluency and/or receptive and/or expressive language (spoken or signed) delay, including in syntax, pragmatics, semantics, morphology, and/or vocabulary. • Despite modifications in instruction, curriculum, and environment, the child's rate of learning is significantly less than his/her peers. • Despite modifications in instruction, curriculum, and environment, the child's educational performance in various age appropriate environments is significantly delayed from his/her peers. • Progress monitoring data indicate intense or sustained resources (e.g. specific assistance, modifications, adaptations, or supports necessary to accommodate the sensory loss) are needed in order for the child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data result of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

THE FOLLOWING INDICATORS APPLY TO

Blindness/Visual Impairment

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Records contain information which provides evidence of blindness/visual impairment. • Measures of blindness indicate the following: o a visual impairment that requires dependence on tactile and auditory media for learning o a chronic condition exists which interferes with the visual learning mode o ocular motor deficit (e.g., muscle imbalance) o any other vision condition that, even with correction, adversely affects a child's educational performance • Measures of visual impairment indicate the following: o a chronic or progressive condition exists which interferes with the visual learning mode o ocular motor deficit (e.g., muscle imbalance) o anophthalmus (absence of actual eyeball in one eye) o any other vision condition that, even with correction, adversely affects a child's educational performance 2. Measures, record review, interviews, observations, and/or tests show that the child's impairment adversely impacts his/her educational performance. • Information from multiple sources of data indicates that the child exhibits a visual impairment, whether permanent, fluctuating or progressive, that adversely affects his/her educational performance. • Evidence of any other vision condition that results in impairment that, even with correction, adversely affects a child's educational performance Other supporting information Records contain medical information which provides evidence of blindness and/or visual impairment or a progressive condition diagnosed by an appropriately trained and qualified ophthalmologist or optometrist, such as documentation of Cortical Visual Impairment (CVI) or evidence that the visual structures are present and working; however, the child does not track, localize, or process vision to receive information from the environment or accurately interpret information about the environment. A diagnosis should be considered as supporting information. However, a diagnosis is not required, nor necessarily determinative, in eligibility decisions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Information from multiple sources of data indicates that the child exhibits a visual impairment that, even with correction, adversely affects his/her educational performance. • Documentation that vision losses are such that the child cannot be provided services appropriately in the general education classroom without specific assistance, modifications, adaptations, or supports necessary to accommodate the visual loss. • Measures, record review, interviews, observations, and/or tests show that the child's educational performance is much below that of his/her peers. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Despite modifications in instruction, curriculum, and environment, child's rate of learning is significantly less than his/her peers. • Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from his/her peers. • Progress monitoring data indicate intense or sustained resources (e.g. specific assistance, modifications, adaptations, or supports necessary to accommodate the visual loss) are needed in order for child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data results of increasingly customized and individually tailored instruction, and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

THE FOLLOWING INDICATORS APPLY TO

Deaf-Blindness

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Records contain information which provides evidence of hearing impairment/deafness. • Measures of hearing impairment indicate the following: o a chronic or progressive condition exists which interferes with the auditory learning mode (permanent or fluctuating) o congenital malformations of the auricle (e.g., absence of a pinna or ear canal opening) that results in a hearing loss o does not constitute deafness • Measures of deafness indicate the following: o hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification o congenital malformations of the auricle (e.g., absence of a pinna or ear canal opening) that results in deafness 2. Records contain information which provides evidence of blindness/visual impairment. • Measures of blindness indicate the following: o a visual impairment that requires dependence on tactile and auditory media for learning o a chronic condition exists which interferes with the visual learning mode o ocular motor deficit (e.g., muscle imbalance) • Measures of visual impairment indicate the following: o a chronic or progressive condition exists which interferes with the visual learning mode o ocular motor deficit (e.g., muscle imbalance) o anophthalmus (absence of actual eyeball in one eye) 3. Measures of educational performance that indicate: • The child exhibits a combination of hearing and visual impairments so severe that communication, developmental and educational needs that the child has cannot be accommodated in special education programs solely for children who are hearing impaired or visually impaired.
Other Supporting Information Records contain medication information which provides evidence of deaf-blindness. See other supporting information under the categories of Visual Impairment/Blindness and Hearing Impairment/Deafness.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, children's educational performance in various age-appropriate environments is significantly delayed from peers. • Progress monitoring data indicate intense or sustained resources (e.g., specific assistance, modifications, adaptations, or supports necessary to accommodate both sensory losses) are needed in order for child to demonstrate adequate progress. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. • Progress monitoring data indicate intense or sustained resources (e.g., specific assistance, modifications, adaptations, or supports necessary to accommodate both sensory losses) are needed in order for child to demonstrate adequate progress. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. For a child three to five years old, who is not yet enrolled in kindergarten • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Speech or Language Impairment

KAR 91-40-1
(lll) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Measures, record review, interview, observations, and/or assessments indicate child's voice, fluency, speech sounds, or language skills are not commensurate with age appropriate expectations. • Measures, record review, interview, observations, and/or assessments indicate child's communication skill level is much below that of peers. • Measures, record review, interview, observations, and/or assessments indicate child's communication skills have impacted development in other areas, e.g., social-emotional, cognitive. • Performance significantly lower than peers on measures of language which are related to curricular performance. 2. Information from multiple sources of data indicates that the child exhibits stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects educational performance. • Measures, record review, interview, observations, and/or assessments indicate child's voice, fluency, speech sounds, or language skills have an adverse effect on the child's educational performance. • Records and interviews indicate a history of academic difficulty relative to communication skills. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit and systematic instructional interventions.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, child's rate of learning is significantly less than peers. • Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from peers. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • Progress monitoring data of increasingly customized and individually tailored instruction and intervention indicate that the child needs specially designed instruction to access the general curriculum. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Traumatic Brain Injury

KAR 91-40-1
(sss) "Traumatic brain injury" means an acquired injury to the brain, caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term shall apply to open or closed head injuries resulting in impairments in one or more areas, including the following: (1) cognition; (2) language; (3) memory; (4) attention; (5) reasoning; (6) abstract thinking; (7) judgment; (8) problem-solving; (9) sensory, perceptual and motor abilities; (10) psychosocial behavior; (11) physical functions; (12) information processing; and (13) speech. The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.

Exclusionary Criteria:

A child must NOT be determined to be a child with an exceptionality if the determinant factor is:

Exclusionary Factor	How to Evaluate
• Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 9215(c) of ESEA);	Evidence shows that the child's previous reading instruction and curriculum included explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies. This evidence may come from; (a) an evaluation of the school's ELA core/tier 1 curriculum and supplemental materials, (b) that the child actually received instruction provided by highly qualified teachers using appropriate ELA core/tier 1 curriculum and supplemental materials, and (c) records of intervention and progress monitoring indicating appropriate instructional adjustments based on child data. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.
• Lack of appropriate instruction in math; or	Evidence shows that the child's previous math instruction and curriculum addressed math calculation, problem solving, and conceptual understanding. This evidence may come from; (a) an evaluation of the school's core/tier 1 curriculum and supplemental materials, and (b) that the child actually received instruction provided by highly qualified teachers using appropriate core/tier 1 curriculum and supplemental materials. For a child three to five years old, who is not yet enrolled in kindergarten, teams should consider "appropriate instruction" as the child's participation in appropriate activities. This evidence may come from interviews with family and other caregivers and through observation in the child's natural environment that indicates whether or not the child has been exposed to activities appropriate for his/her age.

• Limited English proficiency;	If the child being evaluated is an English Language Learner, show evidence that the child was provided with appropriate accommodations and interventions to address it. Consider things such as proficiency in English and in the child's native language, amount of time in the country, level of education in the child's native country, etc. Also consider whether the child's rate of learning is different from those of similar language background and educational experience. If, in spite of appropriate accommodations and interventions, the child's learning difficulties persist, this factor is ruled out.
• and the child does not otherwise meet the eligibility criteria as a child with an exceptionality	Evidence shows that the child's learning difficulties are due to factors other than those associated with the criteria for disabilities as defined in IDEA. For example, frequent moves, incarceration, substance abuse, chronic absenteeism, etc.
• The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.	The term TBI is not used for a person who is born with a brain injury. It also is not used for brain injuries that happen during birth. Evidence is provided that the brain injury was sustained after some period of normal development.
• The term shall not include brain injuries that are the result of brain tumors, brain infections, cerebral vascular accident (strokes), or poisonings.	The term TBI is not used for a person who sustained a brain injury as a result of a brain tumor, brain infection, cerebral vascular accident (stroke), or poisoning. Evidence is provided that the brain injury sustained was not caused by these conditions. (Note: Children with these conditions may meet eligibility requirements under the category of "Other Health Impaired".)

Prong 1: Does the child exhibit an exceptionality?

Indicators
For meeting this prong of eligibility, the team must consider information and have data to support at least 1 indicator from each of the following numbered categories:
1. Record review, interview, observation, and/or tests indicates that the child has an acquired injury to the brain (applies to both open or closed head injuries, including near drowning) caused by an external physical force that has resulted in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. • Record review, interviews, observations, and/or tests in one or more areas (cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech) indicate child's skill level is much below that of peers. • Record review and/or interview indicates the brain injury is not congenital or degenerative or induced by birth trauma. • Record review and/or interview indicate the brain injury is not the result of brain tumors, brain infections, cerebral vascular accident (strokes), or poisonings. 2. Record review, interview, observation, and/or tests indicate the injury adversely affects the child's educational performance. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. Other Supporting Information Records contain medical information which provides evidence of traumatic brain injury.

Prong 2: Does the child need special education [specially designed instruction] and related services?

Indicators
• Despite modifications in instruction, curriculum, and environment, child's rate of learning is significantly less than peers. • Despite modifications in instruction, curriculum, and environment, child's educational performance in various age appropriate environments is significantly delayed from peers. • Progress monitoring data indicate intense or sustained resources are needed to support interventions (e.g. specific assistance, modifications, adaptations, or other supports) necessary to accommodate the needs resulting from the injury. • Despite modifications of instruction, curriculum, and environment, the child does not make sufficient progress to meet age or state-approved grade-level standards across curricular areas. • Progress monitoring data displayed on charts or graphs show low rate of growth in educational performance despite provision of increasingly intense, explicit instructional interventions. • The interventions needed to obtain an adequate level of performance or adequate learning rate are too demanding to be implemented with integrity without special education and related services. • Despite implementation of intensive interventions, which include purposeful instructional design and delivery, prioritized content, protected time and grouping, and performance monitoring, the child does not make sufficient progress to meet age or state-approved grade-level standards in one or more areas. For a child three to five years old, who is not yet enrolled in kindergarten. • Data indicate that a need for intense or sustained resources exists across settings, people, or situations. • Data indicate that the disability has a substantial negative impact on the child's ability to participate in age appropriate activities.

Reporting Requirements

When the initial evaluation and eligibility determination are completed, the evaluation team must prepare a written evaluation/eligibility report. The report must include not only the evaluation results but also document the eligibility determination. The evaluation report serves as the documentation of the child's eligibility. The evaluation report and the documentation of eligibility must be provided, at no cost, to the parent (KAR 91-40-10(b); 34 CFR 300.306(a)(2)). There are specific requirements for reporting the eligibility determination (KAR 91-40-10(a), (e); 34 CFR 300.311). The report must include a statement of:

a. whether the child is a child with an exceptionality;
b. the basis for making the determination;
c. the relevant behavior noted during the observation of the child (and for LD the relationship of that behavior to the child's academic functioning); and
d. the educationally relevant medical findings, if any;
e. and for a child determined to have a learning disability, the report must also include documentation of the following:

(i) the child does not achieve adequately for the child's age or to meet State-approved grade- level standards when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards,

(ii) AND
- the child does not make sufficient progress to meet age or State-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention;

OR
- the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

(iii) The determinate factor for why the child does not achieve adequately for the child's age or does not make sufficient progress to meet age or State-approved grade level standards, or exhibits a pattern of strengths and weaknesses, is not primarily the result of:
- a visual, hearing or motor disability;
- intellectual disability;
- emotional disturbance; K.S.A. 72-3404(ff) states: "Emotional disability" means the same as the term "emotional disturbance" is used in public law 101-476, the individuals with disabilities education act."
- cultural factors;
- environmental or economic disadvantage; or
- limited English proficiency.

(iv) If the child has participated in a process that assesses the child's response to scientific, research-based intervention, the report must also document
- the instructional strategies used; and
- the student-centered data collected.

Documentation that the child's parents were notified about the process, including the following information:
- the State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
- strategies for increasing the child's rate of learning; and
- the parent's right to request an evaluation (K.A.R. 91-40-10(e), (f); K.A.R. 91-40-9(a)(2)(3); 34 C.F.R. 300.309(a)(3); 34 C.F.R. 300.311(a)).

f. Signatures of each team member indicating whether the report reflects their conclusion. If it does not reflect the team member's conclusion, the team member must submit a separate statement presenting his/her conclusion. However, this requirement, that each team member provide a signature on the report indicating whether the report reflects their decision or submit a separate statement presenting their conclusion, does not apply to parents.

Note:

- It is not required that the specific category of exceptionality be identified on any special education forms that parents would see. Specifying the exceptionality label is required only for the MIS data report.

Kansas State Board of Education

900 S.W. Jackson Street, Suite 600 | Topeka, Kansas 66612-1212 | (785) 296-3203 | www.ksde.gov/state-board

Vision

Kansas leads the world in the success of each student.

SUCCESS DEFINED

A successful Kansas high school graduate has the

- Academic preparation,
- Cognitive preparation,
- Technical skills,
- Employability skills and
- Civic engagement

to be successful in postsecondary education, in the attainment of an industry recognized certification or in the workforce, without the need for remediation.

District 1



Danny Zeck, *Vice Chair*
danny.zeck@ksde.gov

District 2



Melanie Haas
melanie.haas@ksde.gov

District 3



Michelle Dombrosky
michelle.dombrosky@ksde.gov

District 4



Connie O'Brien
connie.o'brien@ksde.gov

District 5



Cathy Hopkins, *Chair*
cathy.hopkins@ksde.gov

District 6



Dr. Beryl A. New
beryl.new@ksde.gov

District 7



Dennis Hershberger
dennis.hershberger@ksde.gov

District 8



Betty Arnold
betty.arnold@ksde.gov

District 9

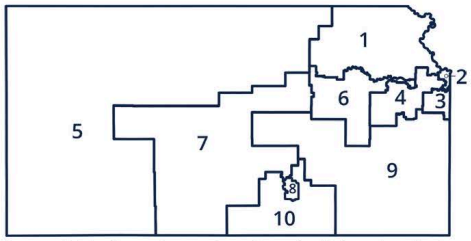


Jim Porter
jim.porter@ksde.gov

District 10



Debby Potter
debbie.potter@ksde.gov



Kansas divided into the ten State Board of Education districts.

KANSAS STATE DEPARTMENT OF EDUCATION

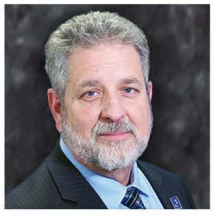
900 S.W. Jackson Street, Suite 102 | Topeka, Kansas 66612-1212 | (785) 296-3201 | www.ksde.gov

Kansas Commissioner of Education



Dr. Jake Steel
jake.steel@ksde.gov

Deputy Commissioner
Division of Fiscal and Administrative Services



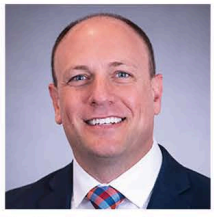
Dr. Frank Harwood
frank.harwood@ksde.gov

Deputy Commissioner
Division of Learning Services



Dr. Renee Nugent
renee.nugent@ksde.gov

Deputy Commissioner
Division of Accountability and Technology



Dr. Zach Conrad
zach.conrad@ksde.gov

The Kansas State Board of Education does not discriminate on the basis of race, color, religion, national origin, sex, disability or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 S.W. Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.

May 27, 2026